

COMMUNITY AFFAIRS

Division Of Codes And Standards Planned Real Estate Development Full Disclosure Act Regulations Proposed Readoption: N.J.A.C. 5:26

Authorized By: William M. Connolly, Director, Division of Codes and Standards,
Department of Community Affairs.

Authority: N.J.S.A. 45:22A-35.

Proposal Number: PRN 2005-

Calendar: Reference: See Summary below for explanation of exception to calendar requirement..

Submit written comments by September 30, 2005 to:

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1, the Planned Real Estate Development Full Disclosure Act Regulations, N.J.A.C. 5:26, are scheduled to expire on July 11, 2006. The Department has reviewed this chapter and finds that that it continues to be necessary and appropriate for the purpose for which it was adopted and is therefore proposing that it be readopted without change.

The purpose of this chapter is to implement the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., by establishing standards for the information required by statute to be given by developers to purchasers of units or interests in planned real estate developments. A planned real estate development is any residential real property located in the State of New Jersey that consists of separately owned units, lots or interests offered or sold as part of a common promotional plan involving common or shared interests in real property. Condominiums, cooperatives,

retirement communities, developments with homeowner associations, time shares and planned unit developments are various forms of planned real estate developments.

The chapter proposed for readoption includes 11 subchapters, which deal with the following subjects: general provisions; registration; application for registration; public offering statements; advertising; contracts; warranties; community associations; conversions; nonbinding reservation agreements; and administration and enforcement.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption have a beneficial social impact in that they implement a statute designed to protect purchasers of units or interests in planned real estate developments. A purchaser in a planned real estate development is buying, not only a specific unit or interest, but also rights in common property. The rules provide detailed requirements as to the types of information that developers must provide to potential purchasers, so that they may make an informed decision as to whether the purchase of a unit or interest in a development would be advisable.

Failure to readopt this chapter would make it impossible to enforce the Planned Real Estate Development Full Disclosure Act, since the specific requirements as to the content of documents filed with the Division of Codes and Standards and given to prospective purchasers are set forth in the rules.

Given the high cost of land, much of the housing that is built in this State that is affordable to households of low, moderate and middle income is in planned real estate developments. This includes much of the housing that has been built in compliance with the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Economic Impact

To the extent that the existence of these rules increases the readiness of buyers to purchase units or interests in new planned unit developments, it increases demand for this housing, thereby providing business for builders and contractors and jobs for workers in the building trades and other construction-related employment.

Failure to readopt these rules would disrupt the market for planned real estate development units and interests and would consequently have an extremely adverse economic impact upon developers of those units, and upon all involved in their construction and sale, as well upon prospective purchasers who might otherwise have difficulty finding housing that they might be able to afford.

The rules provide for a \$112 fee for each application for exemption from registration and for a fee for the filing of an application for registration in the amount of \$1,080, plus \$108 per lot, parcel, unit or interest. No fee is charged for units legally restricted to occupancy by households of low or moderate income. In the event that an engineering survey submitted by a developer is found to be inadequate, the developer is required to pay an additional fee in such amount as may be necessary to pay the cost to the Department of having an additional engineering survey done.

These fees are necessary to cover the cost to the Department of conducting the review and registration process. The program is entirely fee-funded. If these fees were not paid, the Department would be unable to provide the protection to purchasers that is

required by statute. If the fees were not sufficient to pay the cost of having enough staff to review all applications in a timely manner, the resulting delays would be far more costly to developers than are the fees. The experience of the Department has been that developers do not object to paying fees that cover the cost of the program, so long as they get timely service on their applications.

Federal Standards Statement

No Federal standards analysis is required because these rules are not being proposed for readoption in compliance with, or in order to implement, any Federal law or rules or any State law referencing any Federal law or rules.

Jobs Impact

By requiring full disclosure to prospective purchasers of all information relevant to planned real estate developments, these rules provide a basis for greater consumer acceptance of such developments. To the extent that this greater acceptance is translated into increased consumer demand, jobs may be created for persons in the building trades and related fields of employment.

Agricultural Industry Impact

The Department does not anticipate any impact upon the agricultural industry as a result of the readoption of this chapter.

Regulatory Flexibility Statement

The rules proposed for readoption would continue existing requirements imposed upon planned real estate developers, many of whom may be “small businesses,” as defined in the New Jersey Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. This chapter includes recordkeeping, reporting and compliance requirements in the areas of registration, advertising, contracts and agreements, administration and enforcement. The rules impose no additional capital costs or expenses for professional or other services beyond those that would be required in the ordinary course of business. However, N.J.A.C. 5:26-2.2(a)10 allows an exemption from the requirements of the rules where the Division finds that enforcement of the Act is not required due to the small amount of the purchase price, the limited nature of the offering or the limited nature of the common or shared elements. Developers of small projects, who are often small businesses, can avail themselves of this provision.

Smart Growth Impact

Readoption of this rule would promote the achievement of smart growth and the implementation of the State Development and Redevelopment Plan because the rules are necessary to regulate the sale by developers of units and interests in condominium and cooperative townhouse and apartment developments and of other developments involving common property that make intensive use of land and use existing infrastructure..

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:26.